

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES M. DEWEESE,

Plaintiff,

CASE NO. 1:14-CV-386

v.

HON. ROBERT J. JONKER

MICHIGAN DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

_____ /

ORDER

The Court has reviewed Magistrate Judge Kent's Report and Recommendation in this matter (docket # 22) and Plaintiff DeWeese's Objections to the Report and Recommendation (docket # 23). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself and Plaintiff's objections.

Plaintiff objects to the Report and Recommendation in only one respect: he asserts that the Report and Recommendation does not accurately characterize his claim against ARUS Bonn. (docket # 23.) The Report and Recommendation describes the claim as based on ARUS Bonn's denying Plaintiff an indigent loan to purchase hygiene items. Plaintiff points out that his claim against ARUS Bonn is more accurately characterized as based on ARUS Bonn's denial of his request for hygiene items. (docket # 23.) Plaintiff is correct. Plaintiff's Amended Complaint alleges that ARUS Bonn "acted with deliberate indifference to Plaintiff's health and safety and inflicted cruel and unusual punishment upon Plaintiff by completely depriving him of simple hygienic [sic] necessities for a period of 161 days." (docket # 6, ¶ 5.) In its Opinion dated August 22, 2014, the Court described Plaintiff's allegations against Defendants Wright, Bonn, and Battle as based on these defendants' alleged involvement in the denial of hygiene supplies to Plaintiff. (docket # 8, Page ID #108.) Plaintiff's claim against Defendant ARUS Bonn is properly characterized as based on a denial of a request for hygiene supplies, not a denial of an indigent loan. Defendants have not sought summary judgment on this claim, which all agree was properly exhausted.¹

¹Defendants also describe Plaintiff's claim against ARUS Bonn as based on the denial of an indigent loan. (docket # 16.) Defendants cite to Grievance IBC-13-04-1000-3z, which focuses primarily on ARUS Bonn's denial of Plaintiff's request for hygiene products. In this grievance and related appeal, Plaintiff mentioned that he had to request hygiene products because he could not afford to purchase hygiene products and was unable to obtain an indigent loan to do so due to a loss of work assignment. Plaintiff's references to ineligibility for an indigent loan may be the source of any mis-characterization of the claim against ARUS Bonn. Defendants acknowledge that the claim premised on Grievance IBC-13-04-1000-03z was properly exhausted. (docket # 16, Page ID#134).

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (docket # 22) is approved and adopted as the opinion of the Court only to the extent consistent with this Order.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (docket # 15) is **GRANTED** as to Director Heyns and **DENIED** to the extent Defendants seek summary judgment as to Defendants RUM Wright, ARUS Battle, and ARUS Bonn. Defendant Heyns is **DISMISSED** from this action.

Dated: September 24, 2015

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE